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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PENSKE MEDIA CORPORATION,  
dba PMC, a Delaware corporation,

Plaintiff,

v.

PROMETHEUS GLOBAL MEDIA,  
LLC, a Delaware limited liability  
company d/b/a  
hollywoodreporter.com; and DOES 1  
through 10, inclusive,

Defendants.

Case No.: CV 11-7560-JST (MRW)

Hon. Josephine Staton Tucker  
Magistrate: Hon. Michael R. Wilner

**DISCOVERY MATTER:  
DEFENDANT PROMETHEUS  
GLOBAL MEDIA LLC'S  
MEMORANDUM IN OPPOSITION  
TO PLAINTIFF PENSKE MEDIA  
CORPORATION'S  
SUPPLEMENTAL MEMORANDUM  
IN SUPPORT OF ITS MOTION TO  
COMPEL**

**DECLARATIONS OF ANTHONY  
SBARDELLATI AND WILLIAM C.  
WEEKS (filed concurrently)**

Action filed: September 14, 2011  
Discovery Cut-off: November 9, 2012  
Trial Date: July 9, 2013

1 This brief responds to the “Supplemental Memorandum” and supporting  
2 declaration filed by Plaintiff Penske Media Corporation (“Penske”) on December  
3 4, 2012 at 8:22 p.m., less than 24 hours prior to today’s telephonic conference  
4 regarding the timeliness of the parties’ motions to compel. The parties had been on  
5 notice of today’s conference call since November 30, 2012. Penske’s last-minute  
6 filing left Defendant Prometheus Global Media LLC (“Prometheus”) with little  
7 time to reply, particularly for defense counsel on the East Coast, who received the  
8 motion at 11:22 pm local time. Prometheus will briefly set the record straight.  
9 Simply put, Penske’s motion to compel is untimely, and the responsibility for that  
10 untimeliness lies with Penske.

11 Penske initially indicated that it intended to file a motion to compel, but  
12 dropped that effort in favor of making a joint request with Prometheus that the  
13 Court extend all case management deadlines. In pursuing that joint request and  
14 delaying both motion practice and any discovery activity, both parties accepted the  
15 risk that the Court would not grant extensions. Specifically, Penske sent  
16 Prometheus a motion to compel and joint stipulation on October 17, 2012, and  
17 discussed a deadline with Prometheus’s counsel for Prometheus to provide its  
18 portion of the joint stipulation. *See* Declaration of William C. Weeks, submitted  
19 herewith (“Weeks Decl.”), at ¶ 2. However, because the parties were engaged in  
20 settlement discussions, they agreed to submit a stipulation to the Court seeking  
21 leave to push back all dates in the case by six months. Steven Stiglitz, counsel for  
22 Penske, acknowledged in an email dated October 29, 2012 (which is omitted from  
23 the discussion in Penske’s Supplemental Memorandum) that Penske “will agree to  
24 the stay you requested, subject to the Court’s approval. Therefore, the discovery  
25 joint stip appears to be moot.” *See* Exhibit A to Declaration of Anthony  
26 Sbardellati, submitted herewith (“Sbardellati Decl.”). The parties made no  
27 agreement about what would happen if the Court denied the joint request and  
28 Penske attempted to renew its motion to compel. *See* Weeks Decl. ¶ 2. At that

1 point, *i.e.*, on October 29, 2012, discovery was scheduled to close in 11 days.  
2 Neither side had taken a single deposition or produced any documents, and Penske  
3 had failed to respond to Prometheus's proposal months earlier about resolving  
4 disagreement over a protective order.

5 The Court then denied the parties' request to extend the discovery cutoff and  
6 case management dates. ECF No. 29. The parties decided to submit a more  
7 detailed request, which Penske's counsel, Mr. Stiglitz, offered to draft. After four  
8 days, he provided a draft, which the parties submitted on November 9, 2012 – the  
9 deadline for fact discovery in this matter. *See Sbardellati Decl. Ex. B*; ECF No.  
10 30. The Court again denied the request, on November 15, 2012. That evening,  
11 Mr. Stiglitz re-sent Prometheus's counsel the joint stipulation and indicated his  
12 intention to renew his motion to compel.

13 However, as of November 15, 2012, it was no longer possible for Penske to  
14 timely file a motion to compel. The last day for filing discovery motions under  
15 Judge Tucker's Case Management Order was Monday November 19, 2012 (10  
16 days after the close of discovery). Local Rule 37-2.2 required Penske's counsel to  
17 give Prometheus seven calendar days to provide its portion of the joint stipulation,  
18 as well as one business day to review and sign the proposed final motion.  
19 Prometheus was not willing to waive these requirements. Mr. Stiglitz alternatively  
20 proposed that the parties agree between themselves that the discovery deadlines  
21 would be pushed out in the case, notwithstanding the Court's refusal to extend  
22 discovery. Prometheus declined that proposal, which was inconsistent with Judge  
23 Tucker's orders and the Federal Rules. *See Sbardellati Decl. Ex. C*.

24 There is no merit to the suggestion that Prometheus has somehow caused  
25 Penske's delay or reneged on an agreement to adjust the discovery schedule (Supp.  
26 Mem. at 2). Penske mischaracterizes a statement in an email in which  
27 Prometheus's counsel stated that the parties' agreement to jointly seek an extension  
28 of the case management deadlines "of course contemplates that if the court has an

1 issue with the dates in the stip, we would also work out with you a new schedule  
 2 on the motion to compel.” (Supp. Mem. at 2.) This statement merely confirmed  
 3 that the previously agreed due date for Prometheus to provide its portion of the  
 4 joint stipulation was no longer applicable. Prometheus certainly did not promise  
 5 that, if the Court completely denied any extension of discovery, Prometheus would  
 6 still support the filing and consideration of motions to compel, or would agree to  
 7 modify the requirements of the Local Rules.<sup>1</sup>

8 Both parties took a risk by choosing to prioritize settlement negotiation over  
 9 discovery activity. The risk was that if settlement was not finalized before the  
 10 discovery cutoff, the Court might not extend the cutoff and with it the deadline for  
 11 motions to compel. That risk has come to pass. Both sides are left to deal with the  
 12 consequences: Fact discovery is over without document production or depositions  
 13 having occurred; discovery motions are untimely; and both sides must move  
 14 forward.

15  
 16 DATED: December 5, 2012

SAUER & WAGNER LLP

17  
 18 By: /s/ Eve H. Wagner

Eve H. Wagner

19 Attorneys for Defendant Prometheus Global  
 20 Media LLC

21  
 22 <sup>1</sup> After Penske initially provided its Notice of Motion and Joint Stipulation on October 17,  
 23 2012, Prometheus’s counsel requested that Penske provide a revised Joint Stipulation that  
 24 complied with the formal requirements of Local Rule 37-2.2. *See* Weeks Decl. ¶ 2. Penske’s  
 25 counsel agreed to do so, with the understanding that doing so would not re-start the seven-day  
 26 period for Prometheus’s response under Local Rule 37-2.2 – Prometheus’s counsel agreed to  
 27 this. *Id.* However, as described above, the parties subsequently decided to jointly request an  
 28 extension of all case management dates. At no time did Prometheus’s counsel make any  
 agreement with respect to what would happen if the Court denied that request and Penske  
 attempted to renew its motion. *Id.* After the Court denied the parties’ request, when Penske  
 attempted to renew its motion to compel, Penske’s counsel provided Prometheus with the joint  
 stipulation, which he had revised in form in an attempt to comply with the requirements of Local  
 Rule 37-2.1. *Id.*